
Special Education Rights of Parents and Children

If your child is not currently receiving special education services, you have been given this brochure either because you asked that your child receive special services or because we believe that special services may be necessary. Our common objective is to assure that your child receives the free appropriate public education program ("FAPE") he or she needs, if any. To realize this objective, we want to evaluate ("test") your child to identify and document whether your child has any disabilities and, if so, to determine whether and which special education programming and services are required. These tests will utilize materials and procedures selected specifically for your child, and will not include basic tests or procedures used routinely for all students within a class, grade or school. This evaluation will be conducted strictly according to the requirements of federal and state law. Following the evaluation, we will provide you with the complete results and, if necessary, ask you to help us draw up an individualized educational program ("IEP") and identify supportive services tailored to your child's needs. You may ask others to be present at the IEP meeting if you wish.

If your child is already receiving special education services, this brochure is being provided because we are required to do so at least once each year, or because you have requested a copy. This brochure is also sent to parents when they have requested an impartial due process hearing for the first time and when the district proposes a disciplinary change of placement.

This process anticipates your active participation and cooperation. ***No one has the opportunity to know your child better than you.*** The law also provides methods to help you assure that your input is considered. In addition, the law establishes means for you to object to our proposals and to have an impartial person resolve any disputes. This extensive and complex bundle of rights, conferred by federal and state special education laws, generally are called the "procedural safeguards." The purpose of this brochure is to give you an overview of these rights. A more complete explanation is available from your local school district or the Nevada Department of Education.

Where To Get More Help

Your local school district is the first stop for additional help and information. You should speak with your child's teacher or school principal, your local school district director of special education, your school district superintendent, or a member of the school board. You can also contact:

Nevada Department of Education
Office of Special Education, Elementary and Secondary Education, and
School Improvement Programs
700 East Fifth Street, Suite 113
Carson City, Nevada 89701-5096
(775) 687-9171, Relay Nevada: 1-800-326-6888 or
Toll Free: 1-800-992-0900, Ext. 9171

WRITTEN NOTICE

When notice is needed

You will be notified a reasonable time before we propose or refuse to initiate or change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education to your child. This means, as a general matter, that you will be given written notice whenever we want to begin, change or discontinue special education and related services to your child, or the conditions under which they are being provided.

Specific examples of when you will be notified

We will give you written notice a reasonable time before we want, or refuse your request, to provide your child a free appropriate public education, including any of the following:

- reevaluate your child to determine if special education and related services continue to be required
- develop, review, or change the conditions of services to your child
- change your child's current placement
- stop all special education programming (including graduation)
- determine whether your child's disability was the reason for misconduct that requires disciplinary action

What will the notice tell you?

The notice will explain what we want, or refuse, to do and why school personnel reached their decision, including a description of each assessment, record or report they used in reaching that decision, the other options considered and why those options were rejected, and the factors that were relevant to our decision. The written notice will also state where you can obtain another copy of this statement of your rights and will list sources you could contact to get help in understanding your rights.

What to do if you don't understand

The notice must be written in language understandable to the general public. If you have trouble understanding this or any other document, please ask your local school personnel to explain any terms or procedures that remain unclear, or seek assistance from a person with special knowledge and training.

The school district has copies of this notification brochure written in Spanish. We will arrange for an interpreter for parents with limited English proficiency who speak another language. If a parent is deaf or blind or has no written language, we will arrange for communication of this notice in the mode normally used by the parent (such as sign language, Braille, or oral communication).

PARENT CONSENT

When is your approval required?

Your informed written approval ("consent") is required in each of the following instances:

1. Before we can begin testing your child for the first time to determine if he or she requires special education programming ("initial evaluation");
2. Before we can conduct a reevaluation of your child that requires additional testing;
3. Before your child is provided special education and related services for the first time ("initial provision of special education and related services"); and
4. Before we release any personally identifiable information about your child to any person not otherwise entitled by law to see it.

Your agreement to any of these instances must be entirely voluntary and can be revoked at any time. However, if you revoke your consent, your revocation will not be retroactive.

If you refuse your consent or do not respond to our request for your consent for an initial evaluation, we may use mediation or request a due process hearing, as described below, to override your refusal. We may also use mediation or request a due process hearing if you refuse your consent to conduct new assessments as part of a reevaluation. However, we can conduct new assessments as part of a reevaluation without your consent if we can show that we took reasonable measures to obtain your consent and you did not respond.

If you refuse your consent or do not respond to our request for your consent to provide special education and related services to your child for the first time, we cannot use mediation or due process to override your lack of consent. If you do not provide consent for the initial provision of special education and related services, the district will not be required to develop an IEP and will not be in violation of the obligation to make a free appropriate public education available to your child.

Your consent is also required if you and the school district agree that certain members of your child's IEP committee may be excused from attending an IEP meeting.

Can we do things without your approval?

Except for the instances outlined above, your consent is not required for actions regarding identification, evaluation, placement, or the provision of a free appropriate public education. However, we will notify you of other actions we propose or refuse to take. If you disagree with a proposed action after receiving notice of it, you should call your child's principal or the district director of special education to discuss the proposed action. If we cannot agree on our proposed action, you have the right to a due process hearing by an impartial third party. Due process hearings are discussed in more detail later in this document.

SURROGATE PARENTS

Our use of the term "parent" throughout this brochure includes a child's birth or adoptive parent, a foster parent, a legally appointed guardian, a person who is performing the duties of a parent, or a surrogate parent. If we cannot identify or locate a student's parent(s), if the student is a ward of the state, or if the child is an unaccompanied homeless youth, we are required to protect the student's rights and to appoint a surrogate parent

to protect the student's rights. If the child is a ward of the state, a surrogate may also be appointed by a judge. Reasonable efforts will be made to ensure that a surrogate is assigned not more than 30 days after the public agency determines that the child needs a surrogate.

The surrogate parent, who will be selected pursuant to procedures established by state regulation, will have no interest that conflicts with the interests of the student and will have knowledge and skills that ensure adequate representation of the child. The surrogate will not be an employee of any public agency involved in the education or care of the student; however, the fact that the surrogate parent is paid by a public agency to represent the child does not, by itself, disqualify the surrogate. The surrogate may represent the child in all matters concerning the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education.

INDEPENDENT EDUCATIONAL EVALUATION

Can your child be tested at our expense?

You have the right, at any time, to obtain an evaluation of your child by qualified persons who are not employed by the school district; if you ask, we shall provide you with information where the evaluation may be obtained. Such an evaluation is called an independent educational evaluation ("IEE"). School personnel must consider the information obtained through an IEE in any decision made with respect to the provision of a free appropriate education for your child, and hearing or review officers must consider the information in any due process or review hearing.

The school district is obligated to pay for the IEE under either of the following circumstances:

- **IEE REQUESTED BY HEARING OFFICER.** If in the course of an impartial due process hearing, the hearing officer directs that an independent evaluation be conducted, the school district is responsible for the cost of that evaluation.
- **OUR EVALUATION WAS NOT APPROPRIATE.** If you state that our evaluation is not appropriate, we must either pay for the IEE or we must request a hearing to show that our evaluation was appropriate. If the final hearing decision is that our evaluation was appropriate, we are not responsible for the cost of the IEE.

Should you obtain an IEE at our expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria we use in initiating evaluations.

PLACEMENT IN APPROPRIATE INTERIM ALTERNATIVE EDUCATIONAL SETTINGS

We are permitted under law to remove your child from his or her current placement under certain circumstances. School personnel can place your child in an appropriate interim alternative educational setting, another setting, or suspend your child for not more than 10 days if this is the policy we have for all students.

We can place your child in an appropriate "interim alternative educational setting" for up to 45 school days if he or she engages in any of the following conduct at school, on school premises, or at a school function under the jurisdiction of the school, school district, or state:

- carries or possesses a weapon
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance
- inflicts serious bodily injury upon another person

A hearing officer can also order that your child be placed in an appropriate interim alternative educational setting under certain circumstances if the school district demonstrates that maintaining the current placement is substantially likely to result in injury to your child or to others.

If your child is suspended or expelled from school for more than 10 school days in a school year, we must continue to provide him or her with a free appropriate public education, although in another setting. Alternative educational placements ordered by the school district or by a hearing officer must provide for certain things. First, the setting must enable your child to continue to participate in the general curriculum and to continue to receive those services and modifications (including those described in your child's current IEP) that will enable your child to meet the goals set in his or her IEP. The services must also include, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

If a decision is made to place your child in an alternative educational placement for more than 10 days, we must take certain additional actions. First, we must notify you of the decision to make this alternative placement no later than the date on which the decision is made. The notification of our decision must include this statement of your rights. Then, immediately if possible, but no later than 10 days after we make a decision to remove your child to an alternative placement, we must review the relationship between your child's disability and the conduct that resulted in the disciplinary action (referred to as a "manifestation determination"). The review of the relationship between the disability and the conduct must be conducted by relevant members of your child's IEP team.

In determining whether the conduct of your child is a manifestation of his or her disability, certain things must be considered by the IEP team. We must consider all relevant information in your child's file, including your child's IEP, any teacher observations, and any relevant information provided by you. Your child's conduct will be found to be a manifestation of his or her disability if the IEP team finds that the conduct in question was caused by, or had a direct and substantial relationship to, your child's disability, or if the conduct in question was the direct result of our failure to implement the IEP. If your child's conduct is a manifestation of his or her disability, your child must be returned to the placement from which the child was removed, unless you and the district agree to a change of placement. The IEP team must conduct a functional behavioral assessment and develop a behavior intervention plan for the child. If the child already has a behavior intervention plan, the IEP team must review and change the plan, if needed, to address the behavior.

If your child's conduct is determined not to be a manifestation of his or her disability, disciplinary procedures we apply to children without disabilities can be applied to your child. If you disagree with the determination that your child's behavior is not a manifestation of the child's disability or with any decision regarding placement, you may request a hearing and the hearing must be expedited.

UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

We do not have to pay for the cost of an education, including special education and related services, of a child with a disability at a private school or facility if we make a free appropriate public education available to your child, and you elect to place your child in a private school or facility. However, we may be required to reimburse you for the cost of that enrollment under certain circumstances. This reimbursement provision applies only if your child previously received special education and related services under the authority of a public agency, and you enrolled your child in a private elementary or secondary school without our consent or referral. Under these circumstances, reimbursement can be ordered if a court or hearing officer finds that we did not make a free appropriate public education available to your child in a timely manner before you enrolled your child in a private school or facility.

The court or the hearing officer may reduce or deny the cost of the reimbursement if you have not complied with a requirement to inform the district of your intention to place your child in a private school. This requirement can be fulfilled in one of two ways. First, at the most recent IEP meeting you attended prior to removing your child to a private school, you can inform the IEP team that you reject the placement proposed by the district, state your concerns, and state your intent to enroll your child in a private school at public expense. Or, you can give written notice of this information to the district at least 10 business days (including holidays that occur on a business day) prior to removing your child from the public school. Reimbursement shall not be reduced or denied for failure to provide this notice if the school prevented you from providing such notice; if you were not informed that you must provide this notice to the district; or if providing the notice would likely result in physical harm to your child. Reimbursement may, in the discretion of a court or hearing officer, not be reduced or denied if the parent is illiterate and cannot write in English, or if providing the notice would likely result in serious emotional harm to your child.

Reimbursement may also be reduced or denied if we provided written notice of our intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable) prior to the child's removal from the public school, and you did not make your child available for such an evaluation. Finally, reimbursement may be reduced or denied if a court finds that actions taken by you were unreasonable.

HOW DISPUTES ARE RESOLVED

Mediation

The state has developed a Mediation System to assist families, school districts or state agencies in resolving disagreements regarding the provision of appropriate special education and related services to children with disabilities in our state. The state bears the cost of the mediation process. Mediation is a voluntary process that brings together the parties to a dispute and a third party (a mediator) in an attempt to resolve the disagreement through a structured, yet informal meeting. The mediators are qualified and impartial, and they are trained in effective mediation techniques. Sessions are scheduled at times and in places convenient to the parties. Any agreement reached through mediation will be set forth in a written agreement that is legally binding and enforceable in court. Discussions that occur during the mediation process are confidential and may not be used as evidence in subsequent due process hearings or in court proceedings. The parties may be required to sign a confidentiality pledge prior to beginning the mediation process.

Mediation is an alternative but not a prerequisite to the due process hearing. Mediation cannot be used to delay the right to a due process hearing, although both parties may request the hearing officer to postpone the hearing, pending mediation efforts. Please contact the Mediation Coordinator at the Nevada Department of Education for further specific information.

Complaint resolution

You have the right to file a complaint with the Nevada Department of Education when you believe that the school district is not complying with federal special education law. The complaint must be in writing and include the facts related to the issue(s). The Department must complete its review and give you its decision within 60 days. The decision must include findings of fact and conclusions of law that support the decision.

Due process and review hearings

To resolve disputes between parents and schools districts, both parties have the right to impartial due process and review hearings. Initially, a due process hearing decision will be made by an impartial third person concerning your child's identification, evaluation, placement, or the provision of a free appropriate public education ("FAPE") to your child. The due process hearing will be conducted in accordance with the requirements of applicable federal and state law. The decision of the hearing officer can be appealed by you or the school district for review at the state level. Thereafter, both parties also have the right to file suit in state or federal court to contest any review decision.

A due process hearing must be requested within two years of the date you or the school district knew or should have known about the act or omission that gave rise to the hearing request. This two-year timeline does not apply if you were prevented from requesting a hearing because the district misrepresented to you that it had solved the problem, or the district did not give you information that the district was required to give.

If you conclude that you want a due process hearing, the request must be in writing to the superintendent of your school district. You must provide some information to us along with your request for a hearing. That information includes your child's name and address (or available contact information in the case of a homeless child), and the name of the school your child is attending. You must also describe the nature of the dispute and the facts relating to the problem. Further, you must propose a resolution to the problem, to the extent possible at the time. We can provide you with a form to use in requesting a hearing and providing the required information. You may not have a due process hearing until this information has been provided. If we believe the information you provided is incomplete, within 15 days of receiving your request for a hearing we may ask the hearing officer to rule on the sufficiency of the information provided. Likewise, if the school district requests a due process hearing, you also have 15 days to notify the hearing officer if the information provided to you is insufficient.

If the district has not already given you a written notice of the special education action related to the issues in your hearing request, the district has 10 days from receiving your hearing request to send you this notice. Otherwise, the district has 10 days from receiving your hearing request to send you a response that specifically addresses the issues in your hearing request.

A "resolution session" must be held within 15 days of a hearing request, unless you and district agree in writing to waive the meeting or agree to use the mediation process. A resolution session is a meeting to solve the problem about your child's education. The resolution session must include the parents, other relevant members of the IEP team who have specific knowledge of the facts, and a representative of the district who has decision-

making authority. The district may not have an attorney present unless you bring an attorney. If you and the district reach an agreement in the resolution session, you and the district will sign a written settlement agreement that lists all the agreements reached. Like a mediation agreement, this agreement is legally binding and enforceable in court. You or the district may cancel this agreement by sending a written statement to the other party within three business days of signature.

If the school district has not solved the disagreement to your satisfaction within 30 days of receiving the hearing request, the timelines for the due process hearing begin.

We shall provide you with a list of free or low-cost legal services, or other relevant services, if you ask for this information or if a hearing is initiated by you or the school district. Please contact your district director of special education for further specific information regarding due process hearings and reviews.

Placement of your child during hearings

In general, unless we both agree otherwise, we cannot change your child's placement as it existed on the day you ask for a due process hearing until the completion of all legal proceedings. If your child is entering school for the first time, the law requires that, if you agree, we place him or her in a public school program until any hearings or court proceedings are concluded — again unless we both agree to a different placement.

There are some exceptions to this general rule. These exceptions occur when your child is placed in an alternative educational setting for behavior that is not a manifestation of his or her disability, or if your child is removed by your school district to an "interim alternative educational setting" for up to 45 school days for a weapon, drug, or controlled substance violation, or for causing serious bodily injury to another person — without regard to whether the conduct is determined to be a manifestation of your child's disability. Another exception exists for removals by a hearing officer to an "interim alternative educational setting" for up to 45 school days because it is likely that your child may injure himself or herself, or others.

Nothing in these provisions prohibits the school district from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities under state and federal law.

When is a due process hearing available?

A due process hearing may be requested by a student's parent or by the student if he or she is at least 18 years old but less than 22 years old. The school district can also request a hearing. A hearing can be sought because of a disagreement concerning certain aspects of the student's educational program — that is, if we (i) propose to initiate or change the identification, evaluation, or educational placement of your child or the provision of FAPE, or (ii) refuse to initiate or change the identification, evaluation, or educational placement of your child or the provision of FAPE. Following are some of the reasons a parent might seek a hearing:

1. We refuse to identify, evaluate, or appropriately serve your child
2. We fail to consider results of an independent educational evaluation
3. You disagree with a proposed IEP
4. You object to termination of your child's special education program
5. You believe our proposed placement will not meet your child's needs as set forth in the IEP
6. You believe a placement is not in the least restrictive environment necessary to meet your child's needs

7. You disagree with a proposed change of placement
8. You disagree with our decision about the relationship between your child's disability and the behavior which resulted in disciplinary action
9. You disagree with our intent to graduate your child

Who conducts the due process hearing?

The hearing is conducted by a person known as an impartial hearing officer. This person has knowledge of the laws and court rulings pertaining to children with disabilities, and he or she will have received training on conducting a due process hearing and writing decisions in accordance with appropriate, standard legal practice. The hearing officer is appointed by the state superintendent of public instruction. The hearing officer cannot have any personal or professional interest that might conflict with his or her objectivity, or be an employee of a public agency that is involved in the education or care of your child.

How long will a due process hearing decision take?

The hearing must be conducted and a copy of the hearing officer's decision must be mailed to both parties no more than 45 days after the hearing was requested. However, this date may be delayed if the hearing officer has granted a specific extension of time following the request of either party. The hearing officer must reach a decision and mail a copy of written or, at your option, electronic findings of fact and decisions to each of the parties. The Nevada Department of Education, after removing any personally identifiable information, will transmit the findings and decision to the state advisory committee and make them available to the public. In the absence of further action by either party, the due process hearing decision is final.

What are your rights during a due process hearing?

The due process hearing and any oral argument will be conducted at a time and place that is convenient to you and your child, who may be present if you wish. The hearing officer will open the hearing to the public at your request; otherwise the hearing is closed to the public.

At least five business days before the hearing, each party is required to disclose to the other any evidence it intends to introduce at the hearing; either party can prohibit the use of any evidence that is not so disclosed. At least five business days before the hearing, each party is required to disclose to the other all evaluations completed by that date and recommendations based on those evaluations, if the party intends to use this information at the hearing. If the information is not disclosed five business days prior to the hearing, the hearing officer can bar the introduction of the relevant evaluation or recommendation at the hearing without the consent of the other party.

The party requesting the hearing will not be allowed to raise issues at the due process hearing that were not raised in the request for the hearing, unless the other party agrees otherwise.

Either party or its representative(s) may be accompanied and advised by counsel and by individuals with special knowledge or training about children with disabilities. Each may also present evidence, secure the attendance of witnesses, and confront or cross-examine witnesses.

A hearing officer's decision will be made on substantive grounds based on a determination of whether the child received a free appropriate public education. Procedural violations arise to a denial of FAPE only if the inadequacies impede the child's right to FAPE, significantly impede the parents' opportunity to participate in decisions regarding FAPE, or cause a deprivation of educational benefits.

At the conclusion of the hearing, either party or its representative(s) has the right to obtain a written or, at your option, electronic verbatim record of the hearing.

Can the due process hearing decision be appealed?

Both you and the school district can appeal the due process hearing decision to a review officer, who must meet the same impartiality requirements prescribed for local hearing officers. The request for an appeal must be made within 30 days after receiving the decision of the hearing officer.

What are your rights during a review hearing?

The review officer will examine the entire hearing record, insure that required procedures were followed, and make an independent decision. The review officer may take additional evidence if he or she believes that is necessary, including allowing the parties an opportunity for additional argument in person or in writing. If the review officer calls for additional argument, it will be conducted at a time and place that is convenient to you and your child, who may be present if you wish.

How long will a review decision take?

The review officer must reach a decision and mail a copy of written or, at your option, electronic findings of fact and decisions to each of the parties within 30 days after the request for a review is made. However, this date may be delayed if the review officer has granted a specific extension of time following the request of either party. In the absence of further appeal by either party, the decision is final. After any personally identifiable information is deleted, a copy of the findings and decisions will be transmitted to the state advisory committee and made available to the public.

JUDICIAL PROCEEDINGS

Can you appeal to state or federal court?

The review officer's decision is final unless either party files a civil action. Both you and the school district have the right to appeal any review decision to the appropriate state or federal court.

Award of attorney's fees

If you are represented by an attorney and you substantially prevail in any hearings or lawsuit, you may be entitled to recover your attorney's fees from the school district. You can substantially prevail without obtaining all the relief that you wanted from the district.

A prevailing party who is a public agency (including a state department of education or a school district) may be entitled to recover attorney's fees against the parent or the attorney of a parent if the parent's due process request or subsequent action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. The public agency may also be entitled to recover attorney's fees against the attorney of the parent who files a due process request or subsequent action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

Whether you are entitled to attorney's fees can be a difficult determination and must be made by a court; not by the hearing or review officers.

YOUR CHILD'S EDUCATION RECORDS

How can you examine your child's education records?

We have established procedures both to provide you with access to your child's education records and to protect any personally identifiable information in those records. If any education record includes information on a child in addition to yours, you may examine only the information relating to your child, or be informed of that specific information. If you request, we will give you a list of the types and locations of education records used by the school district. We will also tell you whether and who, other than yourself and authorized school district personnel, has examined your child's records, the date access was given and the purpose for which the person is authorized to use the records. We must allow you to inspect and review any education records relating to your child that are collected, maintained or used by the school district. Unless we have been advised that a parent does not have authority under applicable state law governing such matters as guardianship, separation and divorce, we will assume that either parent has the authority to inspect or review his or her child's educational records. We will comply with your request to inspect or review your child's records without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after your request has been made. This right of inspection includes:

EXPLANATION: An explanation and interpretation of these records by school district personnel.

COPIES: The school district may charge a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your rights to inspect and review those records. **REVIEW:** Having your child's records inspected and reviewed by a representative of your choosing.

How can you correct information in the records?

After reviewing your child's education records, you may ask the school district to change any information you believe is inaccurate or misleading or violates your child's privacy or other rights. We will make those changes or reject your request within a reasonable period of time. If we reject your request, we will inform you of our rejection and that you have a right to a hearing. The hearing can be held before any school district official or other individual who does not have a direct interest in its outcome.

Following the hearing, the following steps will be taken:

1. If your objection is justified, we will amend the information accordingly and inform you in writing.
2. If your objection is not justified, you have the right to place a statement in our records commenting on the information or setting forth any reasons for your disagreement with the decision. We will maintain your explanation as part of your child's records as long as we retain the record or any contested portion, and we will include your explanation any time we disclose your child's records or any contested portion.

Can you learn when we disclose your child's records?

We must obtain your consent before allowing information to be used for a purpose other than which it was collected or before disclosing personally identifiable information about your child to anyone not entitled to see it. You can see the names and positions of school district employees entitled to see personally identifiable information about your child at the location where the files are maintained. The district is responsible for insuring the confidentiality of personally identifiable information about all students, as well as providing information about your rights under the federal Family Education Rights and Privacy Act (FERPA) and its implementing regulations, the primary federal statute protecting the privacy of you and your child.